IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 04 of 2003

1. Mobin Ahmad
   S/o Sri Abdul Wahid
   R/o Bhamrola, P.O. Bagwara,
   P.S. Rudrapur, Tehsil – Kichha
   District Udham Singh Nagar.
2. Brij Bhusan Singh
   S/o late Sri Sita Ram Singh
   R/o Bhamrola, P.S. Rudrapur,
   District Udham Singh Nagar.

……. Applicants

Versus

1. State of Uttaranchal
2. Harsh Dev Pnadey
   S/o late Gorakh Nath Pandey
   Village Ramnagar, P.S. Rudrapur
   District Udham Singh Nagar.

…… Respondents

Ms. S.K. Mandal, learned counsel for the applicants.
Mr. H.C. Pande, Asstt. Govt. Advocate for the State.

Hon'ble J.C.S. Rawat, J.

Heard learned counsel for the parties and perused the record.

2) The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the Criminal complaint case No. 2848 of 2002 under Section 193, 182, 420, 465, 468, 471 of the I.P.C. registered at police station Tallital, District Nainital; Ist Fast Judge Nainital Vs. Mobin Ahmed and others, pending before the C.J.M. Nainital contained in Annexure – 1 and 2 to the supplementary affidavit.

3) Brief facts leading to this petition are that one Malik Singh was challaned in a criminal case in Sessions Trial No. 29-A of 1996; State Versus Malik Singh under Section 302 of the I.P.C. registered at police station Rudrapur, District Udham Singh Nagar. Malik Singh was released on bail for which one Harsh Dev S/o Gorakh Nath filed the surety bond in pursuance of the bail order to the tune of Rs. 20,000/-. But the accused Malik Singh jumped the bail. As such the notices were issued to the sureties, including Harsh Dev on the given address. When the police party went to serve the notice to him at the given address on 05.07.2002, they could not find him in the village. Thereafter, the police party enquired about Harsh Dev from the Deputy Pradhan of the village namely, Mobin Ahmad. Mobin Ahmad stated in his Tehreer that Harsh Dev does not reside in the village Bhamrola which was verified by applicant No. 2. The said Tehreer was written on the back of the notice and the notice was sent back to the court concerned. The Additional Sessions Judge, Nainital after perusing the said report send a letter to the Tehsildar Kichha asking him whether any agricultural land in the name of Harsh Dev is recorded in village Bhamrola or not? The Tehsildar in his report informed the Addl. Sessions Judge that Harsh Dev has an agricultural land in said village and an endorsement to that effect was made on the back of the said report. Thereafter, the learned Addl. Sessions Judge issued notices to the applicants to shows cause why they have furnished the wrong information to the court? Pursuant to this, the applicants appeared before the court and submitted their explanation but the court rejected the same. Meanwhile, Harsh Dev appeared before the Court and he deposited the surety of Rs. 20,000/-. The notices were sent to Harsh Dev only on the address given in the surety bond and in that surety bond he was shown as a resident of village Bhamrola. Thereafter, the court recorded the statement of Harsh Dev. After the perusal of the

recorded statement the learned Sessions Judge rejected the explanation of the applicants and ordered to file a complaint against them before the competent court. In pursuance of the said order a complaint was filed before the court below and the cognizance was taken as per the provisions of the Code of Criminal Procedure, 1973. Feeling aggrieved by the said order, the instant petition has been filed by the applicants before this Court.

3) Learned counsel for applicants contended that Harsh Dev was not a resident of village Bhamrola and he was residing in village Ramnagar. Certain documents to this effect were filed before the court below while giving the explanation by the applicants. In support of their case the applicants filed domicile certificate, Khasra Khotoni and electricity bills there. By filing these documents it was contended that Harsh Dev was not resident of Bhamrola but he was living in village Ramanager and the learned Sessions Judge erred in holding that the report of the applicants was incorrect. At the outset, it is the settled principle of law that while disposing of the petition under Section 482 of the Code of Criminal Procedure, this Court can not enter into the evidence which is to be adduced before the trial court and which is to be adjudicated or adjudged by the trial court. While exercising the power under Section 482 of the Cr.P.C, this Court cannot weigh and assess the evidences like a trial court. The complaint and the cognizance order has been challenged before this Court. The arguments advanced on behalf of the applicants relates to the appreciation of evidence which should be produced at the time of the trial. Trial court will be at liberty to evaluate the evidence on the basis of the record produced before the court below. It is also evident from the perusal of the record that when the notices were sent at the later date to Harsh Dev on the address of village Bhamrola, it was served sufficiently and Harsh Dev

deposited the amount of surety before the court below. It appears that the applicants has written the Tehreer in such a way that Harsh Dev may be released from the hands of the court, so that no amount can be realized from him.

4) In the circumstances in view of the above discussion, I find no merits in this case. This court is not inclined to interfere with the impugned order passed by the court below. The petition is devoid of merits and is dismissed accordingly. However, it is directed that the court below shall dispose of the trial pending before it within a period of four months from the date of production of certified copy of this order.

(J.C.S. Rawat, J.)

Dt.: 24th June, 2005
H.Negi